SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1100

UNITED STATES OF AMERICA,
Third Party Plaintiff-Appellee,
vs.
STATE OF ILLINOIS,
Third Party Defendant-Appellant.

PETITIONER'S REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Printed by Authority of the State of Illinois

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PETITIONER'S REPLY MEMORANDUM

Respondent, by implication, has erroneously misrepresented the status of the doctrine of sovereign immunity in the State of Illinois. At page 12 of the Brief for the United States in Opposition to the Petition for Writ of Certiorari, footnote 12 reads:

> "Petitioner suggests that the decision will nullify Art. 4 § 26 of the Illinois Constitution (Pet. 6, A. 14). However, this provision has been superseded by Art. 13, § 4, effective January 1, 1972, which provides: 'Except as the General Assembly may provide by law, sovereign immunity in this State is abolished.'"

One reasonable inference that can be drawn from this quotation is that the doctrine of sovereign immunity has been abolished in the State of Illinois. However, this is not correct.

Article XIII, § 4 of the Illinois Constitution of 1970 delegated to and authorized the Illinois General Assembly to prescribe the manner and form in which the State, if at all, may be sued.

Public Act 77-1776 maintained the doctrine of sovereign immunity in Illinois as provided under the Court of Claims Act, which in time was amended by Public Act 77-1777, effective January 1, 1972. The exceptions contained in the Court of Claims Act, and the amendatory language of Public Act 77-1777, are not relevant to the theory of this discussion. The Public Acts are set out in full in Appendix A.

Most recently, the Illinois Appellate Court, First District, First Division, had an opportunity to examine the status of the doctrine of sovereign immunity in Illinois in *Chicago Welfare Rights* v. *Edward T. Weaver, Director of the Illinois Department of Public Aid*, —— Ill. App. 2d ——, Case No. 56573 (1972).[1] In concluding that the doctrine of sovereign immunity is a bar to money judgments against the State of Illinois, Mr. Justice Dieringer, for a unanimous Court, found the status of the law to be as follows:

> "The Supreme Court of Illinois explained the prohibition against making the State a party defendant in a law suit in *Monroe* v. *Collins*, (1946) 393 Ill. 553:

1. This opinion has not yet been published, but a copy of it is included in Appendix B.

'The constitutional provision which prohibits the State from being a party in suits at law or equity is in aid of the State's sovereignty. In *In re City of Mt. Vernon*, 147 Ill. 359, we quoted from *Haus* v. *Louisiana*, 134 U. S. 1, with approval as follows: "*It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission.*" And further, "The obligations of a State rest for their performance upon its honor and good faith, and cannot be made the subjects of judicial cognizance, unless the State consents to be sued or comes itself into court."'

* * * * *

"But this general rule must now be interpreted to be modified by the rule of *Edelen* v. *Hogsett*, (1969) 44 Ill. 2d 215, when the suit involves money damages. In *Edelen*, the court made clear that Section 26 has been modified by the General Assembly in the form of the Court of Claims Act, Section 439, Chapter 37 of the Illinois Revised Statutes. That act provided for the Court of Claims to have exclusive jurisdiction of certain causes of action. Section 8 is pertinent to this litigation.

'The court shall have exclusive jurisdiction to hear and determine the following matters:

(a) All claims against the State founded upon any law of the State of Illinois or upon any regulation thereunder by an executive or administrative officer or agency, ***.'

"The reason for this exclusive jurisdiction is, as explained in *Edelen*, to provide for the expeditious centralized handling of the numerous claims against the State. Also in *Edelen*, the court noted:

'As we have heretofore pointed out, appellants filed this action in the circuit court, and insofar as is disclosed by the allegations in the complaint,

made no effort whatsoever to seek remedy against the State in the Court of Claims. Under such circumstances, it cannot be said that they are persons aggrieved by the prohibition of suits against the State embodied in the Illinois constitution as modified by the establishment of the Court of Claims.'

"In the case at bar we hold that the plaintiffs should have brought their suit in the Court of Claims to provide for the orderly disbursement of State funds if their suit were found to have merit.

"*The plaintiffs contend this case should be decided under the Illinois Constitution of 1970, but the result would be no different. The new constitution specifically delegates to the legislature the function of prescribing the manner and form in which the State is to be sued* (emphasis added). Section 4 of Article VIII of the Constitution of 1970 provides:

'Except as the General Assembly may provide by law, sovereign immunity in this State is abolished.'

"On August 17, 1971, the Illinois Legislature responded by approving Public Act 77-953 which reenacted the Court of Claims Act."[2]

The rationale for maintaining the doctrine of sovereign immunity was well stated by the opinion in *Chicago Wel-*

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2. It should be noted that Judge Dieringer's decision has two incorrect citations. The opinion refers to § 4 of Article VIII of the 1970 Constitution. The correct citation is Article XIII, § 4 of the 1970 Constitution. Of more importance is the incorrect citation of Public Act 77-953 as a reenactment by the legislature of the Court of Claims Act. Public Act 77-953 merely changed some of the language in the Court of Claims Act, and is not the reenactment of the Court of Claims Act. To clarify this point, a copy of Public Act 77-953 is also included as Appendix C.

fare Rights, supra. The State of Illinois must be permitted an opportunity to match costs with revenue. The State does not have infinite resources, and revenue must be matched with encumbrances of appropriations. If this were not permitted, it is conceivable that judgment orders of both state courts and federal courts could so encumber the State General Revenue Fund as to prevent the State of Illinois from performing its governmental functions and duties, including, but not limited to, the providing of mental health facilities, welfare assistance payments, aid to the physically handicapped, and delivery of health care facilities. There is a fine balance of budgeting to which the State of Illinois must adhere; and if the Seventh Circuit Court of Appeals decision were permitted to stand, a foreboding precedent would be existent to impair the ability of the State to budget its finances and deliver its much needed services. Unlike the federal government, the State of Illinois cannot indulge in deficit financing. The State cannot create dollars where none are existent. Fortunately, the federal government can do this through the interrelationship of the United States Treasury's borrowing power and the regulation of the money supply by the Federal Reserve system.

For these additional reasons, it is requested that a Writ of Certiorari be issued.

Respectfully submitted,

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3. (a) Actually, the Doctrine of Sovereign Immunity has never been abolished in Illinois. Articel VIII, § 4 of the Constitution of 1970 was effective and implemented as of January 1, 1972. Article IV, § 26 of the Illinois Constitution of 1870 was in full force and effect to January 1, 1972. See chronology in subsection (b).

(b) The Constitution of the State of Illinois was adopted in convention at Springfield, Illinois on September 3, 1970; ratified by the People, December 15, 1970; and, in force, July 1, 1971. The transition schedule of the 1970 Constitution contains the following relevant provisions:

TRANSITION SCHEDULE

The following Schedule Provisions shall remain part of this Constitution until their terms have been executed. Once each year the Attorney General shall review the following provisions and certify to the Secretary of State which, if any, have been executed. Any provisions so certified shall thereafter be removed from the Schedule and no longer published as part of this Constitution.

Section 1. Delayed Effective Dates.

Section 2. Prospective Operation of Bill of Rights.

Section 3. Election of Executive Officers.

Section 4. Judicial Offices.

Section 5. Local Government.

Section 6. Authorized Bonds.

Section 7. Superintendent of Public Instruction.

Section 8. Cumulative Voting for Directors.

Section 9. General Transition.

Section 10. Accelerated Effective Date.

SECTION 1. DELAYED EFFECTIVE DATES

(a) The provisions of Section 1, 2(a), 2(b), and 2(c) of Article IV shall not apply to the General Assembly elected at the general election in 1970. Notwithstanding Section 6(b) of Article IV, the incumbent Lieutenant Governor for the remainder of his term shall be President of the Senate with a right to vote when the Senate is equally divided.

(b) Section 9(a) of Article VII shall become effective on December 1, 1971.

(c) Section 2 of Article VIII shall become effective on January 1, 1972.

(d) The second sentence of Section 2 of Article XI shall become effective on January 1, 1972.

(e) Sections 2 and 4 of Article XIII shall become effective on January 1, 1972.

SECTION 9. GENERAL TRANSITION

The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

APPENDIX A

(2)

STATE GOVERNMENT—IMMUNITY OF STATE AS DEFENDANT OR PARTY
PUBLIC ACT 77-1776
HOUSE BILL 2047

An Act in relation to immunity for the State of Illinois.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. [S.H.A. ch. 127, § 801]. Except as provided in "AN ACT to create the Court of Claims, to prescribe its powers and duties, and to repeal AN ACT herein named", filed July 17, 1945, as amended, the State of Illinois shall not be made a defendant or party in any court.

Section 2. (S.H.A. ch. 127, § 801 note). This Act shall take effect on January 1, 1972.

Approved Dec. 10, 1971.
Effective Jan. 1, 1972.

(3)

COURT OF CLAIMS—AMENDATORY ACT OF 1971
PUBLIC ACT 77-1777

HOUSE BILL 2048

An Act to amend Sections 7, 8, 18, 20, 21, 22-1, 22-2 and 24 of "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act here named", filed July 17, 1945, as amended to add Sections 25, 26, 27, 28 and 29 thereto and to make an appropriation therefor.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 7, 8, 18, 20, 21, 22-1, 22-2 and 24 of "AN ACT to create the Court of Claims to prescribe its powers and duties and to repeal an Act herein named", filed July 17, 1945, as amended, are amended and Sections 25, 26, 27, 28 and 29 are added thereto, the amended and added sections to read as follows:

Sec. 7 [S.H.A. ch. 37, § 439.7]

The court shall record its acts and proceedings. The Secretary of State, ex officio, shall be clerk of the court, but may appoint a deputy, who shall be an officer of the court, to act in his stead. The deputy shall take an oath to discharge his duties faithfully and shall be subject to the direction of the court in the performance thereof.

The Secretary of State shall provide the court with suitable court rooms, chambers and such office space as is necessary and proper for the transaction of its business.

Sec. 8. [S.H.A. ch. 37, § 439.8]

The court shall have exclusive jurisdiction to hear and determine the following matters:

(a) All claims against the state founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the Workmen's Compensation Act[1] or the Workmen's Occupational Diseases Act.[2]

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1. Chapter 48, § 138.1 et seq.
2. Chapter 48, § 172.36 et seq.

(b) All claims against the state founded upon any contract entered into with the State of Illinois.

(c) All claims against the state for time unjustly served in prisons of this State where the persons imprisoned prove their innocence of the crime for which they were imprisoned; provided, the court shall make no award in excess of the following amounts: for imprisonment of 5 years or less, not more than $15,000; for imprisonment of 14 years or less but over 5 years, not more than $30,000; for imprisonment of over 14 years, not more than $35,000; and provided further, the court shall fix attorney's fees not to exceed 25% of the award granted.

(d) All claims against the State for damages in cases sounding tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, at law or in chancery, if the State were suable, and all claims sounding in tort against the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System or the Board of Governors of State Colleges and Universities, provided that an award for damages in a case sounding in tort shall not exceed the sum of $25,000 to or for the benefit of any claimant. The defense that the State or the Medical Center Commission or the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System or the Board of Governors of State Colleges and Universities is not liable for the negligence of its officers, agents, and employees in the course of their employment shall not be applicable to the hearing and determination of such claims.

(e) All claims for recoupment made by the State of Illinois against any claimant.

(f) All claims pursuant to the "Law Enforcement Officers and Firemen Compensation Act".[3]

Sec. 18. [S.H.A. ch. 37, § 439.18]

The court shall provide, by rule, for the maintenance of separate records of claims which arise solely due to lapsed appropriations and for claims for which amount of recovery sought is less than $1,000. In all other cases, the court shall file with its clerk a written opinion in each case upon final disposition thereof. All opinions shall be compiled and published annually by the clerk of the court.

Sec. 20. [S.H.A. ch. 37, § 439.20]

At every regular session of the General Assembly, the clerk of the court shall transmit to the General Assembly a complete statement of all decision in favor of claimants rendered by the court during the preceding two years, stating the amounts thereof, the persons in whose favor they were rendered, and a synopsis of the nature of the claims upon which they were based. At the end of every term of court, the clerk shall transmit a copy of its decisions to the Governor, to the Attorney General, to the head of the office in which the claim arose, to the State Treasurer, to the Comptroller, and to such other officers as the court directs.

Sec. 21. [S.H.A. ch. 37, § 439.21]

The court is authorized to impose, by uniform rules, a fee of $10 for the filing of a petition in any case in which

3. Chapter 48, § 281 et seq.

the award sought is more than $50 and less than $1,000 and $25 in any case in which the award sought is $1,000 or more; and to charge and collect for copies of opinions or other documents filed in the Court of Claims such fees as may be prescribed by the rules of the Court. All fees and charges shall be forthwith paid into the State Treasury.

Sec. 22-1. [S.H.A. ch. 37, § 439.22-1]

Within six months from the date that such an injury was received or such a cause of action accrued, any person who is about to commence any action in the Court of Claims against the State of Illinois, the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System, or the Board of Governors of State Colleges and Universities, for damages on account of any injury to his person shall file in the office of the Attorney General and also in the office of the Clerk of the Court of Claims, either by himself, his agent, or attorney, giving the name of the person to whom the cause of action has accrued, the name and residence of the person injured, the date and about the hour of the accident, the place or location where the accident occurred, a brief description of how the accident occurred, and the name and address of the attending physician, if any.

In actions for death by wrongful act, neglect or default, the executor of the estate, or in the event there is no will, the administrator or other personal representative of the decedent, shall file within six months of the date of death or the date that the executor or administrator is qualified, whichever occurs later, in the office of the Attorney Gen-

eral and also in the office of the Clerk of the Court of Claims, giving the name of the person to whom the cause of action has accrued, the name and last residence of the decedent, the date of the accident causing death, the date of the decedent's demise, the place or location where the accident causing the death occurred, the date and about the hour of the accident, a brief description of how the accident occurred, and the names and addresses of the attending physician and treating hospital if any.

Sec. 22-2. [S.H.A. ch. 37, § 439.22-2]

If the notice provided for by Section 22-1[1] is not filed as provided in that section, any such action commenced against the State of Illinois, the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System, or the Board of Governors of State Colleges and Universities, shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from further action in the Court of Claims for such personal injury.

Sec. 24. [S.H.A. ch. 37, § 439.24]

The General Assembly hereby creates The Court of Claims Fund and shall make annual appropriations thereto from which the Court may direct immediate payment of:

(a) All claims arising solely as a result of the lapsing of an appropriation out of which the obligation could have been paid.

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1. Chapter 37, § 439.21-2.

(b) All claims pursuant to the "Law Enforcement Officers and Firemen Compensation Act."[1]

(c) All other claims wherein the amount of recovery sought is less than $1,000.00.

Sec. 25. [S.H.A. ch. 37, § 139.24-5]

Any person who files a claim before the court shall, before seeking final determination of his claim exhaust all other remedies and sources of recovery whether administrative, legal or equitable; except that failure to file or pursue suits against State employees, acting within the scope of their employment, shall not be a defense.

Sec. 26. [S.H.A. ch. 37, § 139.24-6]

The granting of an award under this Act shall constitute full accord and satisfaction. There shall be but one satisfaction of any claim or cause of action and any recovery awarded by the court shall be subject to the right of set-off of an amount equal to the monies received from any other source, whether received in consideration of release or covenant.

Sec. 27. [S.H.A. ch. 37, § 439.24-7]

The provisions of this Amendatory Act of 1971 shall be severable, and if any provision of this Amendatory Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Amendatory Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

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1. Chapter 48, § 281 et seq.

Sec. 28. [**S.H.A. ch. 37, § 439.24-8**]

This Amendatory Act of 1971 shall apply only to causes of action accruing on or after January 1, 1972.

Sec. 29. [**S.H.A. ch. 37, § 439.24-9**]

This Act shall be known and may be cited as the "Court of Claims Act."

Section 2. [S.H.A., ch. 37, § 439.7 note] The sum of $200,000 is appropriated to The Court of Claims Fund for the purposes set out in Section 24 of this Amendatory Act.

Section 3. [S.H.A. ch. 37, § 439.7 note] This Amendatory Act shall take effect on January 1, 1972.

Approved Dec. 10, 1971.

Effective Jan. 1, 1972.

APPENDIX B

56573 CHICAGO WELFARE RIGHTS ORGANIZATION, a not-for-profit corporation, et al., Plaintiffs-Appellees, v. EDWARD T. WEAVER, Successor to HAROLD O. SWANK, Director, Illinois Department of Public Aid, et al., Defendants-Appellants.	Appeal from Circuit Court, Cook County. Honorable Walter P. Dahl, Presiding.

MR. PRESIDING JUSTICE DIERINGER delivered the opinion of the court:

This class action was brought in the Circuit Court of Cook County by plaintiff welfare families under 42 U.S.C. 1983 for declaratory judgment, injunctive and other relief to implement 42 U.S.C. § 602(a)(23) [402(a)(23) of the Social Security Act], a 1968 amendment to the Social Security Act which provided a cost-of-living adjustment effective July 1, 1969, for recipients of Aid to Families with Dependent Children (AFDC). Release of benefits alleged to be wrongfully withheld by defendants was also sought. On August 30, 1971, the court entered a decree awarding the plaintiff class retroactive AFDC payments. Defendants appeal from that portion of the judgment. The decree also provided that the adjustment of the Illinois Department of Public Aid's (IDPA) shelter maximum

from $90 to $97 was correct rather than the increase of $90 to $100 asked for by the plaintiffs. The plaintiffs cross appeal from this portion of the judgment.

The State of Illinois is voluntarily taking part in the AFDC program of the Social Security Act, 42 U.S.C. § 601 et seq. On September 1, 1963, Illinois established a $90 per month maximum on the shelter allowance any recipient could receive. Section 202.7, Chapter 23, Illinois Revised Statutes, 1963. On January 2, 1968, Congress enacted § 402(a)(23):

> "[B]y July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximum that the State imposes on the amount paid to families will have been proportionately adjusted."

An HEW interpretation of 45 CFR § 233.20(a)(2)(ii), which refers to § 402(a)(23), states:

> "'By July 1, 1969' means the required updating will have been completed and all AFDC assistance payments will have been recomputed in accordance with revised amounts, and, if applicable, adjusted maximums and ratable reductions.
>
> " * * *
>
> "'Reflect fully changes in living costs since such amounts were established' means that the State agency must identify when the amounts to determine need were last priced. A cost study of the AFDC amounts should have been completed between January 2, 1968, and July 1, 1969, and the changes in living costs from the date the amounts were last priced should have been determined.
>
> " * * *

"Acceptable cost study methods

Method B [Used by the IDPA in this case]

a. Using the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, for the appropriate region determine the current index price for the applicable items of living;

b. Calculate percentage change for the items in the index from the date the standard was last established to the present date; * * *

"'Will have been adjusted' means the amounts used by the State agency to determine need will have been corrected to reflect the changes in costs of living, since the amounts were last established. This adjustment in assistance standards must be made, even though other provisions regarding payment may offset it.

"Adjustment amounts and costs study must bear a reasonable time relationship between cost study and the application into agency regulations. A cost study in early 1968 which was reflected in the agency's standard effective July 1, 1968, meets the requirements of the Act. However, if the agency did not adjust its standards until July 1, 1969, the cost study in early 1969 would not be acceptable; a more current study is needed."

On May 29, 1969, the Illinois Department of Public Aid submitted to the Department of Health, Education, and Welfare (HEW) a report indicating that the revision of the shelter standard and allowance was "in process," and that the change would be in effect on July 1, 1969. Compliance, however, was delayed for a full year.

Harold Swank, Director of the IDPA, initially proposed to comply by adopting a graduated scale of shelter standards and maximums for families of five persons or more, but leave the $90 standard and allowance for families of

four or less untouched. He also suggested increasing the number of exceptions to the maximum which already existed by 2000. HEW objected that this did not conform to the regulations. Mr. Swank replied that he considered Illinois to be in conformity with the regulations and stated:

> "In Cook County and the outlying communities referred to above, the need for rentals over the $90 maximum has been recognized by the Public Aid Code since 1963. The number of exceptions authorized has gradually been increased, whenever the need for same has occurred to a total of 1,575 in August 1969 (1250 for Cook County and 325 for downstate). The actual number of exceptions used in September 1969 was 1,210 in Cook County and 273 downstate. Although this kind of up-dating by exceptions as the need occurs may not be considered ideal, it is practical in view of the circumstances and I believe that it does meet the Federal requirements."

HEW again rejected this proposal, and on April 22, 1970, Swank advised HEW of his proposal to bring IDPA into "technical conformity" by adjusting:

> "the State's maximum from $90 to $95, by reflecting the 5.9 percent increase in the rental component of the Bureau of Labor Statistics Consumer Price Index for the Chicago area from July 1, 1967, to January 1, 1970. The last action by the General Assembly relative to rent standards was with the enactment of the Illinois Public Aid Code in July 1967 at which time $90 was established as the maximum."

HEW accepted the resulting $5.00 increase in the maximum, but on July 13, 1970, the plaintiff Chicago Welfare Rights Organization wrote a letter to HEW alleging that the calculation for adjustment had been based on a period with an incorrect base. By letters of August 6, 1970, and

August 18, 1970, HEW advised Swank that September 1, 1963, and not July 1, 1967, was the correct base date. In the August 18th letter Edmund J. Siemicki, Deputy Regional Commissioner, Social and Rehabilitation Service, stated:

> "Secondly, it is clear that the period September 1, 1963, to July 1, 1969, would be acceptable measuring period:
>
> "'U.S. Department of Labor Bureau of Labor Statistics, rent index for September 1963 was 105.14. The same index for July 1969 was 113.4. This represented ———————— in the rent index for September 1963 ————————:
>
> Thus, the Illinois shelter maximum should have been increased from $90 to $97 (assuming that the State agency would round amounts under $.50 to the nearest dollar and amounts of $.50 and over to the next highest dollar. The correct measuring period is September 1, 1963 to July 1, 1969 (as provided in Section 402(a)(23) of the Act.'"

On August 27, 1970, Swank issued Official Bulletin 70.49 making an adjustment to $97. The plaintiffs assert that a terminal date of July 1, 1970, should be used because that is when the adjustment was first made. During the period from July 1, 1969, to July 1, 1970, shelter costs increased 3% representing an additional $3.00 a recipient must pay to obtain shelter. As a result, they assert the maximum should be raised to $100. On oral argument counsel for the plaintiffs estimated the cost of the arrearage to be $100,000, while the Attorney General said the cost would be several times that and there is no legislative appropriation for the money in the years past or at present.

Plaintiff families are all dependent upon the Illinois and Cook County Department of Public Aid, and they al-

lege they all have actual shelter costs in excess of the shelter allowance they have been receiving from the IDPA.

There are several issues presented on appeal. The only one we need consider is jurisdiction, that is, whether the award of retroactive benefits by the Circuit Court of Cook County violates Section 26 of Article IV of the Illinois Constitution of 1870. That section provides:

> "The State of Illinois shall never be made defendant in any court of law or equity."

The Supreme Court of Illinois explained the prohibition against making the State a party defendant in a law suit in *Monroe* v. *Collins,* (1946) 393 Ill. 553:

> "The constitutional provision which prohibits the State from being a party in suits at law or equity is in aid of the State's sovereignty. In *In re City of Mt. Vernon,* 147 Ill. 359, we quoted from *Haus* v. *Louisiana,* 134 U.S. 1, with approval as follows: 'It is an established principle of jurisdiction in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission.' And further, 'The obligations of a State rest for their performance upon its honor and good faith, and cannot be made the subjects of judicial cognizance, unless the State consents to be sued or comes itself into court."

The plaintiffs argue that the immunity of the State from suit does not extend to a State officer when he is enforcing an unconstitutional statute or is proceeding in violation of law. In *Schwing* v. *Miles,* (1937) 367 Ill. 436, the court said:

> "It is established that a suit against the department is a suit against the State * * * and will not lie. On the other hand, where the action at law or suit in equity is maintained against a State officer or

> the director of a department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff under an unconstitutional act, or under an assumption of authority which he does not have, such suit is not against the State."

But this general rule must now be interpreted to be modified by the rule of *Edelen* v. *Hogsett,* (1969) 44 Ill. 2d 215, when the suit involves money damages. In *Edelen,* the court made clear that Section 26 has been modified by the General Assembly in the form of the Court of Claims Act. Section 439, Chapter 37 of the Illinois Revised Statutes. That act provided for the Court of Claims to have exclusive jurisdiction of certain causes of action. Section 8 is pertinent to this litigation:

> "The court shall have exclusive jurisdiction to hear and determine the following matters:
>
> (a) All claims against the State founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency, * * *."

The reason for this exclusion jurisdiction is, as explained in *Edelen,* to provide for the expeditious centralized handling of the numerous claims against the State. Also in *Edelen,* the court noted:

> "As we have heretofore pointed out, appellants filed this action in the circuit court, and insofar as is disclosed by the allegations in the complaint, made no effort whatsoever to seek remedy against the State in the Court of Claims. Under such circumstances, it cannot be said that they are persons aggrieved by the prohibition of suits against the State embodied in the Illinois constitution as modified by the establishment of the Court of Claims."

In the case at bar we hold that the plaintiffs should have brought their suit in the Court of Claims to provide for the orderly disbursement of State funds if their suit were found to have merit.

The plaintiffs contend this case should be decided under the Illinois Constitution of 1970, but the result would be no different. The new constitution specifically delegates to the legislature the function of prescribing the manner and form in which the State is to be sued. Section 4 of Article VIII of the Constitution of 1970 provides:

> "Except as the General Assembly may provide by law, sovereign immunity in this State is abolished."

On August 17, 1971, the Illinois Legislature responded by approving Public Act 77-953 which reenacted the Court of Claims Act.

For the above reasons, we find the Circuit Court was without jurisdiction to hear this case. The decree is reversed and the cause is dismissed.

DECREE REVERSED AND CAUSE DISMISSED.

BURMAN and ADESKO, JJ., concur.

APPENDIX C

COURT OF CLAIMS—JURISDICTION—RULES
PUBLIC ACT 77-953
HOUSE BILL 434

An Act to amend Sections 8, 9 and 15 of "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named", filed July 17, 1945, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 8, 9 and 15 of "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named", filed July 17, 1945, as amended, are amended to read as follows:

Sec. 8. [S.H.A. ch. 37, § 439.8]

The court shall have exclusive jurisdiction to hear and determine the following matters:

(a) All claims against the State founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the Workmen's Compensation Act[1] or the Workmen's Occupational Diseases Act.[2]

(b) All claims against the State founded upon any contract entered into with the State of Illinois.

(c) All claims against the State for time unjustly served in prisons of this State where the persons imprisoned prove their innocence of the crime for which they

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1. Chapter 48, § 138.1 et seq.
2. Chapter 48, § 172.36 et seq.

were imprisoned; provided, the court shall make no award in excess of the following amounts: for imprisonment of 5 years or less, not more than $15,000; for imprisonment of 14 years or less but over 5 years, not more than $30,000; for imprisonment of over 14 years, not more than $35,000; and provided further, the court shall fix attorney's fees not to exceed 25% of the award granted.

(d) All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, in a civil action, if the State were suable, and all claims sounding in tort against the Medical Center Commission, the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System or the Board of Governors of State Colleges and Universities; provided, that an award for damages in a case sounding in tort shall not exceed the sum of $25,000 to or for the benefit of any claimant. The defense that the State or the Medical Center Commission or the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System or the Board of Governors of State Colleges and Universities is not liable for the negligence of its officers, agents, and employees in the course of their employment is not applicable to the hearing and determination of such claims.

(e) All claims for recoupment made by the State of Illinois against any claimant.

(f) All claims for recovery of overpayment of premium taxes or fees or other taxes by insurance companies made to the State resulting from failure to claim credit allowable for any payment made to any political subdivi-

sion or instrumentality thereof. Any claim in this category which arose after July 16, 1945, and prior to July 11, 1957, may be prosecuted as if it arose on July 11, 1957, without regard to whether or not such claim has previously been prosecuted or determined.

Sec. 9. [S.H.A. ch. 37, § 439.9]

The court may:

A. Establish rules for its government and for the regulation of practice therein; appoint commissioners to assist the courts in such manner as it directs and discharge them at will; and exercise such powers as are necessary to carry into effect the powers granted in this Section.

B. Issue subpoenas to require the attendance of witnesses for the purpose of testifying before it, or before any judge of the court, or before any notary public, or any of its commissioners, and to require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it. In case any person refuses to comply with any subpoena issued in the name of the chief justice, or one of the judges, attested by the clerk, with the seal of the court attached, and served upon the person named therein as a summons in a civil action is served, the circuit court of the proper county, on application of the clerk of the court, shall compel obedience by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

Sec. 15. [S.H.A. ch. 37, § 439.15]

When a decision is rendered against a claimant, the court may grant a new trial for any reason which, by the law applicable to civil actions between individuals, would furnish sufficient ground for granting a new trial.

Approved Aug. 17, 1971.